

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3123 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARAT HIMATBHAI THAKKAR

Versus

COLLECTOR

Appearance:

MR VIJAY H PATEL for Petitioner

MS. HARSHA DEVANI, A.G.P. for the respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/12/96

ORAL JUDGEMENT

Rule. Service of rule is waived by Ms. Harsha Devani, learned Asst. Government Pleader appearing for the respondents.

The petitioner being holder of manufacturing licence Nos. 2/81 and 10/85 faced enquiry on 25.1.1994 at his manufacturing unit resulting in certain irregularities having been found. A notice came to be issued in that respect to the petitioner who gave reply

to the said notice and gave explanation against the alleged irregularities. By order dated 3.2.1995 the Collector confiscated the goods (paddy, rice etc.) worth Rs. 72,898/- and did not accept the explanation rendered by the petitioner.

The petitioner carried the matter in appeal in appeal No. 297 of 1995 before the Deputy Secretary, Food and Civil Supplies Department, Government of Gujarat. The petitioner had taken all the contentions including the contention that the learned Collector passed ex-parte order by violating the principle of natural justice. In this connection, the petitioner further contended that the stock statements (stock patraks) had been taken away by the Civil Supply Officer and they were returned after a long time with the result that proper explanation could not be rendered before the learned Collector for want of evidence. The appellate authority has set out this contention by recording the fact that the relevant papers were in the office of the Collector and therefore the petitioner could not render proper explanation but has not dealt with this contention and proceeded only on the alleged admissions in the panchnama. That is how the petitioner's appeal came to be rejected by the impugned order of the appellate authority passed on 11.3.1996.

Having heard the learned Advocate for the petitioner and the learned A.G.P. for the State, I am of the opinion that when the fact that the relevant papers were in the Collector's office was not in dispute, the petitioner ought to have been given an opportunity to render explanation at least before the appellate authority in respect of the alleged irregularities. Mr. V.H. Patel, learned Advocate, has referred to the decision of the Supreme Court in the case of N. NAGENDRA RAO & CO. VS. STATE OF A.P. reported in AIR 1994 S.C. 2663 where the following observations from para 5 have been headnoted. The said observations would read as under:-

"Since the power of confiscation under S. 6A is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried but is liable to be prosecuted and penalised under S. 7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the

Control Orders. The language of the Section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock."

Besides this, the apex court had an occasion to observe in the aforesaid case that the purpose of sub-section (2) of Section 6A is for protecting the goods seized by the Collector and if such goods are spoiled or if they deteriorate it would be a loss not only to the owner but to the society. This observation is also required to be borne in mind while dealing with the seized / confiscated goods which are obviously subject to the decay, deterioration.

In the result the impugned order of the appellate authority in this petition is required to be set aside. The said order is therefore set aside. The matter is remanded to the appellate authority for hearing the appeal on merits after giving opportunity to the petitioner of showing cause from the papers which are now with the petitioner, against the alleged irregularities. The appeal shall be accordingly heard and decided in accordance with law and bearing in mind the aforesaid decision of the apex court as expeditiously as possible preferably within eight weeks from the date of the receipt of the writ of this direction. Rule is made absolute only in the aforesaid terms. No order as to costs.

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